

AN ORDINANCE OF THE CITY OF CAPE CORAL, FLORIDA APPROVING A FRANCHISE AND CONSTITUTING A FRANCHISE AGREEMENT WITH FLORIDA CABLEVISION MANAGEMENT CORP., D/B/A/ TIME WARNER CABLE ("TIME WARNER") PURSUANT TO THE CITY OF CAPE CORAL, FLORIDA CABLE TELEVISION CODE, ADOPTED BY ORDINANCE 90-00, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CAPE CORAL, FLORIDA, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF SUCH FRANCHISE AND PROVIDING FOR REGULATION AND USE OF SUCH SYSTEM; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING A SAVINGS CLAUSE AND EFFECTIVE DATE.

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NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. Authority. The City Council of the City of Cape Coral has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida, Florida Statutes, City of Cape Coral Ordinance 90-00 (the "Ordinance") and the Charter of the City of Cape Coral.

SECTION 2. Approval of Franchise. The City of Cape Coral hereby approves a franchise with Time Warner to own, operate, and maintain a cable television system in the City of Cape Coral, Florida.

SECTION 3. Constitution of Franchise Agreement. The following shall constitute the Franchise Agreement between the City of Cape Coral, Florida and Time Warner:

THIS AGREEMENT, effective this 11th day of September, 2000, is by and between the CITY OF CAPE CORAL, a Florida municipal corporation (the "City") and FLORIDA CABLEVISION MANAGEMENT CORP., ("Time Warner").

WHEREAS, pursuant to the Communications Act of 1934, as amended, 47 U.S.C. §§521 et seq., the City may grant or renew a franchise to construct, operate and maintain a cable television system; and

WHEREAS, on September 11, 2000, the City Council of Cape Coral, Florida ("Council"), adopted Ordinance 90-00 of the City of Cape Coral, Florida, and provided for the issuance and regulation of cable television franchises for, and the installation, construction and operation of, cable television systems within the City; and

WHEREAS, Time Warner desires to renew its franchise to construct, install, maintain, and operate a cable system in the City, and has requested a renewal of such franchise from the City; and

WHEREAS, the construction, installation, maintenance, and operation of such a system involves the use and occupation of the streets of the City, over which the City exercises governmental control; and

WHEREAS, to the best of the City's knowledge Time Warner has substantially complied with the material terms of its franchise; and

WHEREAS, the Council has evaluated (or caused to be evaluated by its consultants) Time Warner's request in light of the requirements of federal and state law and the Ordinance, and has conducted a public hearing concerning Time Warner's renewal request and renewal application; and

WHEREAS, the Council has relied on Time Warner's representations and has considered all information presented to it by representatives of Time Warner, the City staff, and the public; and

WHEREAS, based on said representations and information, the Council has determined that a renewal of Time Warner's nonexclusive franchise to construct, install, maintain and operate a cable system in the City, subject to the terms and conditions set forth herein and in the Ordinance, is consistent with the public interest; and

WHEREAS, on September 11, 2000, the Council determined to renew Time Warner's non-exclusive franchise to own, construct and operate a cable television system within the City, subject to the terms and conditions of the Ordinance and subject also to the City and Time Warner entering into this Franchise Agreement; and

WHEREAS, the City and Time Warner have reached agreement on the terms and conditions of this Franchise Agreement which shall supersede Time Warner's prior franchise.

NOW, THEREFORE, in consideration of the City's renewal of Time Warner's franchise to own, construct, install, maintain and operate a cable system within the City, and to use and occupy the Streets of the City for that purpose, and in consideration of Time Warner's promise to provide cable service to residents of the City pursuant to the Ordinance and under the terms and conditions set forth herein, and in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged, the franchise is hereby granted; and

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

Section 1. Definitions. Except as otherwise provided herein, the definitions in Section 15-2 of Ordinance 90-00 of the City of Cape Coral, Florida, shall govern this Franchise Agreement. In addition, the following definitions shall apply:

A. Ordinance shall mean Ordinance 90-00 of the City of Cape Coral, Florida, as enacted on September 11, 2000, and any references in this Franchise to said Ordinance or to any section thereof shall mean the Ordinance as enacted on that date.

B. Franchisee or Time Warner shall mean Florida Cablevision Management Corp., d/b/a Time Warner Cable ("Time Warner") and its lawful and permitted successors, assigns and transferees pursuant to Sections 29 and 30 of this Agreement and Ordinance 90-00 of the City of Cape Coral, Florida, respectively.

C. Notice to the cable operator shall be deemed effective upon receipt. Notice to the City shall be effective upon receipt by the City Manager.

Section 2. Grant of Franchise.

A. Subject to the terms of this Franchise Agreement and Ordinance 90-00, the City hereby grants Franchisee a franchise for the right and privilege to own, construct, install, maintain and operate a Cable System within the Franchise Area.

B. The Franchise granted herein is solely for the operation of a cable system to provide cable services in the City of Cape Coral.

C. Any agreement by Franchisee to provide cable service in the City is subject to the terms of this Franchise.

Section 3. Term of Franchise. This franchise shall be for a period of fifteen (15) years plus an additional thirty six (36) months, representing the unexpired term of the pre-existing franchise agreement, unless otherwise sooner terminated or otherwise extended in accordance with the terms of this Franchise Agreement. The Franchise shall commence upon September 11, 2000 and terminate on September 10, 2018. This Franchise Agreement is subject to all other requirements and conditions set forth herein and in Ordinance 90-00 of the City for a grant of a franchise to become effective.

Section 4. Non-Exclusive Franchise. The Franchisee's right to use and occupy the Streets shall be non-exclusive, and does not expressly or implicitly preclude the issuance of other

franchises to operate cable systems within the City, or affect the City's right to authorize use of City Streets to other persons to operate cable systems or for other purposes as it determines appropriate, during the term of this Franchise Agreement. Any such franchises shall be granted in a nondiscriminatory and competitively neutral manner, consistent with applicable law.

Section 5. Franchise Subject to Communications Act, State Law and Ordinance.

A. This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Communications Act, any amendments thereto, and any other applicable provision of Federal or State Law, existing or hereafter adopted.

B. This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of Ordinance 90-00 of the City, in effect at the time of the effective date of this Agreement, in addition to the terms, conditions and provisions set forth in this Franchise Agreement. The provisions of the Ordinance shall prevail over conflicting or inconsistent provisions of this Franchise Agreement, unless an explicit intent to amend or modify the Ordinance is herein expressed.

Section 6. Franchisee Subject To Other Laws, Police Power.

A. The Franchisee is subject to, and agrees to comply with all applicable Federal, State and local laws.

B. The Franchisee shall at all times be subject to all lawful exercise of the police power of the City, to the extent not inconsistent with the express terms of this Franchise Agreement.

Section 7. Reservation of Rights.

A. This Franchise Agreement shall be modified, at the request of the City or Franchisee, after public notice and hearing, to comply with the laws of the State of Florida and Federal Law, including, but not limited to, the rules and regulations promulgated by the Federal Communications Commission. Any such modification shall be in a writing executed by both the City and Franchisee.

B. The City reserves all rights to exercise its powers as granted by the Constitution of the State of Florida or by other applicable State or Federal law. Franchisee shall at all times be subject to all lawful exercise of the police power of the City, to the extent not inconsistent with the express terms of this Franchise.

C. Subject to applicable law, except as may be specifically provided in the Ordinance or under the terms of this Franchise Agreement, and subject to the Communications Act, the failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise Agreement or Ordinance, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

D. The City reserves the right to acquire, purchase, own and/or operate a Cable System to the extent permitted by local, State and Federal Law.

Section 8. Insurance.

A. Franchisee shall obtain and maintain insurance of the types and minimum amounts required in Section 15-10 of

Ordinance 90-00, in such a manner as to comply with each and every requirement of that Section.

B. The Franchisee shall provide proof to the City of compliance with this Section no later than sixty (60) days from the date of the Council ordinance approving the grant of the Franchise. Failure to provide the City with proof of insurance within the prescribed time period will be a violation of this Franchise Agreement and subject Franchisee to penalties consistent with this Franchise and the Ordinance.

Section 9. Indemnification of the City. Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its elected or appointed officials, employees, committees and boards, against any and all claims, suits, costs, losses, damages, expenditures causes of action, proceedings, judgments for equitable relief, and costs and expenses in accordance with Section 15-10.E of Ordinance 90-00 of the City.

Section 10. Security Fund. Pursuant to Section 15-11 of Ordinance 90-00, the Franchisee shall establish and maintain a security fund with the City in an amount of Fifty Thousand Dollars (\$50,000.00), in the form of a cash deposit, performance bond, or letter of credit.

Section 11. Construction Bond. Pursuant to Section 15-12 of Ordinance 90-00, prior to any substantial Cable System construction, upgrade, rebuild or other work in the streets, Franchisee shall furnish a construction bond in favor of the City in an amount equal to ten percent (10%) of the value of the work in the streets but in no event less than Twenty Five Thousand Dollars (\$25,000.00). Failure to provide such construction bond to the City no less than ten (10) days prior to the start of any work to be performed in the streets shall constitute a material violation of this Agreement and the Ordinance subject to remedies in accordance with Section 15-22 of the Ordinance. The construction bond must be approved by the City, which approval shall not be unreasonably withheld. The construction bond shall be maintained until said construction work hereof is completed and for a period not to exceed six (6) months thereafter. Franchisee shall notify the City in writing when it believes the construction has been completed.

Section 12. Use of Streets.

A. Franchisee agrees at all times to comply with and abide by all applicable provisions of the City Code.

B. All of Franchisee's Cable System distribution facilities shall be installed and maintained in accordance with Section 15-21 of Ordinance 90-00.

C. If the City is required to perform emergency Street work requiring relocation of Franchisee's facilities in the Streets, then Franchisee shall reimburse the City for its reasonable costs associated with such relocation, to the extent other users of the rights-of-way are so responsible, consistent with applicable law. If circumstances permit, City shall make reasonable efforts to notify Franchisee in advance, so that it may perform the work.

Section 13. Minimum Facilities and Services.

A. The Franchisee shall provide minimum facilities and services in accordance with Section 15-13 of the Ordinance. Franchisee shall at all times during the term of this Franchise perform all necessary repairs, modifications, or other measures to its cable system necessary for the cable system to be capable of passing frequencies of at least 750

MHZ and being fully operational with a minimum channel capacity of at least seventy eight (78) video channels.

B. In the event Franchisee fails to maintain the system in the City as required in A above, then the Franchisee agrees that the City may impose fines in the amount of Seven Hundred and Fifty Dollars (\$750) per day as of the date Franchisee was required to comply with the provisions of Section A above, as set forth in Section 15-13 of the Ordinance, provided, however, that City shall not impose a fine if the delay is a result of force majeure or other circumstances beyond Franchisee's control. It is agreed that the aforestated fine represents a reasonable estimate of the damages suffered by the City and/or its subscribers, whether actual or potential.

C. In the event the Franchisee is required to provide a future system rebuild or upgrade of the Cable System, the date of completion of such rebuild or upgrade will be in accordance with Section 15-13.A of the Ordinance.

D. Franchisee further agrees to provide Cable Service, without charge, to all City governmental buildings listed on Exhibit A and any such buildings as may be constructed during the term of this Agreement in accordance with Section 15-13.A(5)(b) of the Ordinance. Such service shall include the Basic Cable Service tier, including any additional programming added to that level of service.

E. School Commitments.

1. Franchisee shall, upon request, provide at least one cable television service outlet and when technically feasible and available in the area, at least one standard installation connection to a cable on-line service to each public elementary and secondary school within its franchise area that is passed by its cable system, and shall provide Basic Cable Service and cable on-line service to those installations at no cost to the City or school involved, and shall charge no more than its time and material costs for any additional cable service outlets (including cable on-line service) to such facilities.

2. Any school connected pursuant to subparagraph 1 above may elect to install its own internal wiring (provided such wiring meets required technical specifications) and to bear the cost thereof. Basic Service shall be provided to each outlet in all connected schools, at no cost to the City or school involved.

3. If provided elsewhere, Franchisee shall provide a free education program listing to each connected school. Such educational program listing will identify and describe programming on Franchisee's system that is appropriate for use in the classroom and will provide suggested curriculum support ideas.

4. If provided elsewhere, Franchisee shall provide to each connected school materials for teachers that explain the educational applications of Franchisee's broadband cable systems and services. If provided, the materials will be provided to all connected schools.

5. Nothing herein shall preclude Franchisee from providing benefits to schools which exceed those provided herein.

F. All video signals received for transmission that contain closed circuit captioning information for the hearing impaired shall in turn contain such information in

the form received when transmitted by the cable operator to the subscribers of the system.

G. Franchisee shall comply with technical standards as set forth in Section 15-14 of the Ordinance.

H. Franchisee shall comply fully with all applicable laws concerning handicapped or disabled persons, and shall indemnify and hold the City harmless from any suit, claim, or demand against it for violation of such laws that arises from Franchisee's provision, or failure to provide, services in conformity with such laws.

I. Any and all rights which the City may have, now or in the future, to regulate the Franchisee's provision of the cable Internet services are hereby reserved by the City and may be exercised at any time throughout the term of this Franchise Agreement, unless otherwise prohibited by applicable law. If Franchisee provides access to its System to Internet Service Providers on an open, non-discriminatory basis on a Cable System owned or operated by the Franchisee, its parents, Affiliates or subsidiaries serving subscribers in Lee County, Franchisee shall provide access on such basis on its system in the City.

Section 14. Technological Improvements to System.

A. Throughout the term of this franchise, the Franchisee shall construct, operate, maintain and upgrade the Cable System in order to ensure that it continuously conforms to the State-of-the-Art as defined in the Ordinance.

B. The Franchisee shall, upon request, report annually in writing to the City Manager, a summary of the previous year's activities in development of the State-of-the-Art of cable systems and the system serving the City including but not limited to, services and products initiated or discontinued, new technologies, number of subscribers, homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the City, as well as rate and charge increases and/or decreases for the previous fiscal year. It is the obligation of the Franchisee to include within this report any and all information necessary to evaluate Franchisee's system as compared to the definition of "State-of-the-Art" as defined in Section 15-2.CC of the Ordinance.

C. The Franchisee shall make such technically and commercially feasible improvements to its System as may be necessary to bring the System to the State of the Art, pursuant to Section 15-13 of the Ordinance.

D. Any upgrade or rebuild of a Franchisee's Cable System ordered by the City Council pursuant to this Section and the Ordinance may include such incentives as the Council may deem appropriate to ensure timely compliance by the franchisee to the extent provided in the Ordinance.

Section 15. Technical Standards. Franchisee shall maintain and operate its Cable System, at a minimum, in full compliance with Section 15-14 of Ordinance 90-00.

Section 16. Proof of Performance Tests. Franchisee shall perform, at its expense, the proof of performance tests as required by Section 15-14 of Ordinance 90-00.

Section 17. Access Channels and Facilities.

- A. 1. Access Channel Capacity. Pursuant to Section 15-15 of the Ordinance, Franchisee shall provide the City for its exclusive use with one (1) activated access channel and a maximum of two (2) channels on the basic tier for municipal governmental access use, as determined by the City.
2. The second channel shall be made available to the City within ninety (90) days of receipt of a request therefor from the City Manager or his designee, provided that the first channel has been programmed for at least eight (8) hours per day for eight (8) weeks with non-repetitive programming. If after Franchisee has provided to the City a second channel, the first channel is programmed less than eight (8) hours per day for an eight (8) week period, Franchisee may, upon ninety (90) days written notice to the City reclaim the second access channel. In no event shall the City lose the exclusive use of the first channel.
3. Franchisee shall maintain adequate capacity on its System to permit the upstream transmission of programming from the City Hall and EEOC Buildings for the purpose of carriage of the programming on the City government access channel(s).
4. Franchisee shall, on two separate channels, provide carriage on the basic tier of Lee County programming and the programming of the Lee County School Board to all subscribers within the City of Cape Coral, provided the Franchisee has the right to carry the signal.
5. Franchisee shall make available and maintain all necessary headend and system electronic and distribution equipment so that any programming transmitted upstream on the upstream channel from the City Hall Building, and/or EEOC may be transmitted downstream to all Subscribers on the City of Cape Coral access channels provided pursuant to this Section and Section 15-15 of the Ordinance.
6. Franchisee agrees that all access channels will be provided to Subscribers on the System as a part of Basic Service. If such information is supplied to Franchisee or known by Franchisee, Franchisee will publicize programming on the access channels as a part of any ordinary printed program listings which Franchisee prepares or will include access channel programming listings in any monthly program guide which Franchisee prepares, provided that information concerning access channel programming is provided to or becomes known to Franchisee within the time that other programmers are required to provide such information for inclusion in such program listings or program guide.
- B. Access Facilities, Equipment and Support. No later than the effective date of this Franchise, franchisee shall provide to the City a grant in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), for equipment and support for the production of municipal programming.
- C. Notwithstanding anything to the contrary, franchisee hereby agrees that any equipment, facilities, or other support provided pursuant to agreement shall not be deemed a fee or a tax or a credit against any fee or tax collected by any governmental entity.

Section 18. Commercial Leased Access. Franchisee shall provide commercial leased access channels as required by Federal Law.

Section 19. Emergency Use of Facilities.

A. Franchisee shall comply with all FCC rules on emergency use of facilities and consistent therewith emergency communications shall be coordinated through the Lee County Emergency Services Office.

B. Franchisee shall provide adequate standby power generating capacity at the Cable System headend and on its system to the extent consistent with its normal operating standards.

Section 20. Lock-out Devices. Franchisee shall make available at reasonable charge to any residential Subscriber, upon the request of such Subscriber, a "parental guidance" or "lock-out" device which shall permit the Subscriber, at his or her option, to eliminate the audio and visual transmissions from any Channel reception to the extent technically feasible. Such device may be a function of a converter.

Section 21. Line Extension Policy. Upon request and payment of all applicable charges, and provided that the requesting person gives Franchisee access to his or her premises in order to furnish, maintain and continue to offer service to that person, Franchisee shall, throughout the term of this Agreement, promptly furnish, maintain, and continue to provide all services distributed over the System to any person at his or her place of residence within the City, in accordance with Section 15-13.B of the Ordinance.

Section 22. Cable Home Wiring Commitments. Franchisee will comply with all FCC rules regarding cable home wiring, as amended from time to time.

Section 23. Franchise Fee.

A. In consideration of the privilege granted herein to use and occupy the Streets to own, construct, install, maintain and operate its Cable System, Franchisee, as compensation for the privilege granted under a franchise for the use of the City's streets to construct and operate a cable system, shall pay to the City a franchise fee in an amount up to a maximum of either (1) five percent (5%) of the Franchisee's gross revenues derived directly or indirectly from the operation of its cable system within the City to provide cable services during the term of its franchise; or (2) in the event the Communications Act or other applicable law is amended to permit the City to assess a franchise fee of a greater specific amount or on a broader revenue basis than that specified in (1) above, the Franchisee agrees to pay to the City the new amount after a public hearing in which the public and Franchisee are given an opportunity to comment on the impact of the higher fee. [In no event shall a Franchisee pay a Franchise fee greater than the maximum permitted by applicable law.] Franchisee will pay to the City such higher amount effective with the next available billing cycle in which the higher charge may be placed on Subscribers bills.

B. Franchisee may calculate Gross Revenues for purposes of determining the franchise fee owed on either a cash or accrual basis, provided, however, that Franchisee shall notify the City at least ninety (90) days in advance of any change in the method used, and provided, further, that any such change shall not result in Franchisee's failure to recognize or include any Gross Revenue in its calculation of franchise fee owed to City. If Franchisee calculates Gross

Revenues on an accrual basis, Franchisee may subtract its actual bad debt expense determined in accordance with Generally Accepted Accounting Principles for the relevant period from Gross Revenues, provided, however, that any bad debt subsequently collected shall be included in Gross Revenues in the period in which the bad debt is collected.

C. Franchisee shall pay the franchise fee to the City in full compliance with the requirements set forth in Section 15-16 of Ordinance 90-00.

D. The annual statements required to be filed by the Franchisee with the City pursuant to Section 15-17 of Ordinance 90-00 shall be certified by a certified public accountant and the Franchisee's chief financial or other duly authorized officer. Franchisee shall bear the cost of the preparation of such statements.

E. The acceptance by the City of any payment from Franchisee of the franchise fee shall not constitute a release or an accord and satisfaction of any claim the City may have against Franchisee for performance of any of its obligations under Ordinance 90-00, this Franchise Agreement, or local, State or Federal Law, including, without limitation, Franchisee's obligation to pay the proper franchise fee amount owed, subject, however, to applicable statute of limitations, if any.

F. Following the expiration or the termination for any reason of its Franchise, Franchisee shall pay the franchise fee owed as of the date that its operations ceased within thirty (30) calendar days of ceasing such operations. Such payment shall be accompanied by a Gross Revenues audit report prepared by a certified public accountant or duly authorized officer of Franchisee showing the revenues received by Franchisee since the end of the previous fiscal year.

G. Franchisee expressly agrees that: (i) the "franchise fee includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such; (ii) the "franchise fee" does not include any tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers; (iii) the franchise fee does not include capital costs which are required by the franchise to be incurred by the cable operator for educational or governmental access facilities; (iv) the franchise fee does not include requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bond, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; (v) Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said City taxes or other fees or charges of general applicability which Franchisee is required to pay to the City, which are specified in parts (ii); (iii) and (iv); (vi) Franchisee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said City taxes or other fees or charges of general applicability, which are specified in parts (ii); (iii) and (iv); (vii) Franchisee shall not apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges of general applicability which are specified in parts (ii); (iii) and (iv) as a deduction or other credit from or against any of its franchise fee obligations, each of which shall be deemed to be separate and distinct obligations of Franchisee.

Section 24. Reports and Records. Franchisee shall furnish the City with all of the information as required under Ordinance 90-00.

Section 25. Right to Inspect Financial Records and Facilities.

A. Franchise shall abide by the provisions of the Ordinance with respect to reports and records.

B. Pursuant to Section 15-16 and Section 15-17 of Ordinance 90-00, the City shall have the right to inspect, at Franchisee's local office, books and records specified herein and such other records as may be required by the City to perform its regulatory responsibilities under Ordinance 90-00 or applicable Federal Law. The City agrees to carry out any such inspection during Franchisee's normal business hours and upon reasonable notice. Access by the City, consistent with Section 15-17 of the Ordinance, to perform its regulatory responsibilities to Franchisee's books and records shall not be denied on grounds that such books and records contain proprietary or confidential information.

C. The City shall accord all books and records that it inspects under this Section the degree of confidentiality in accordance with Section 15-17.E of Ordinance 90-00.

D. Pursuant to Section 15-14 and Section 15-17 of Ordinance 90-00, the City shall have the right to inspect Franchisee's facilities and property during Franchisee's normal business hours and upon reasonable notice.

Section 26. Customer Service Requirements.

A. Franchisee agrees to comply with each of the customer service requirements set forth in Section 15-18 of Ordinance 90-00.

B. To the extent consistent with applicable law, for thirty (30) days after notice of retiering or rate increases, a customer may obtain changes in service tiers at no additional charge.

Section 27. City Purchase of Cable System. The City may, upon the recommendation of the City Manager and the approval of the Council, acquire ownership of and operate Franchisee's Cable System in accordance with Section 15-25 of Ordinance 90-00.

Section 28. Modification of Franchise. Franchisee shall file an application with the City for any modification of its Franchise pursuant to Section 15-8 of Ordinance 90-00. The application shall fully conform with each of the requirements set forth in that Section that apply to applications for modification.

Section 29. Transfer of Franchise.

A. No transfer of a franchise shall occur without prior approval of the City, pursuant to Section 15-24 of the Ordinance, which shall not be unreasonably withheld.

B. Franchisee shall file an application to transfer its Franchise or to transfer control of Franchisee in full compliance with Sections 15-8 and 15-24 of Ordinance 90-00.

Section 30. Procedures for Requesting Approval of Transfer. In addition to the requirements set forth in Sections 15-8 and 15-24 of Ordinance 90-00, the following procedures shall be followed by Franchisee in requesting the City's consent to transfer its Franchise or to transfer control of Franchisee,

where such request has not been submitted prior to the effective date hereof.

A. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a transfer, Franchisee shall submit to the City an application for approval of the transfer. Such application shall include the following:

1. A statement of the reason for the contemplated transfer.

2. The name, address and telephone number of the proposed transferee.

3. A detailed statement of the corporate or other business entity organization of the proposed transferee, including but not limited to the following:

- (a) The names, business addresses, state of residence and country of citizenship of all general partners and/or corporate officers and directors of the proposed transferee.

- (b) The names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling, or being entitled to have or control ten percent (10%) or more of the ownership of the proposed transferee and the respective ownership share of each such person or entity.

- (c) A detailed and complete financial statement of the proposed transferee, prepared by a certified public accountant if audited statements were made, and if not, by a duly authorized financial officer of the proposed transferee, for the fiscal year immediately preceding the date of the request for transfer approval, and a letter or other acceptable evidence in writing from a duly authorized officer of the proposed transferee setting forth a clear and accurate description of the amount and sources of funding for the proposal transaction and its sufficiency to provide whatever capital shall be required by the proposed transferee to construct, install, rebuild, maintain and operate the proposed system in the City consistent with the terms of the Franchise.

- (d) A description of all previous experience of the proposed transferee in operating Cable Systems and providing Cable Services or related or similar services.

- (e) A detailed description of the proposed plan of operation of the proposed transferee, which shall include, but not be limited to the following:

- (i) A detailed map indicating all new areas proposed to be served, a proposed time schedule for the installation of all equipment necessary to become operational throughout the new areas to be served, and the projected total cost for new construction of the System.

- (ii) A statement or schedule setting forth all proposed classifications of rates and charges to be made against Subscribers and all rates and charges and to each of any said classifications, including installation

charges, service charges, special,
extraordinary, or other charges.

4. Upon request, the proposed purchase price of the Cable System, and the terms and conditions of the proposed transfer.

Section 31. Renewal of Franchise. The provisions of Ordinance 90-00 shall govern any and all proceedings to renew this Franchise. If Franchisee decides to initiate a formal renewal process in accordance with Section 626(a)-(g) of the Communications Act, 47 U.S.C. § 546(a)-(g), it and the City must comply with each of the requirements in the Communications Act as well as the additional requirements set forth in Ordinance 90-00.

Section 32. Rates.

A. Nothing in Ordinance 90-00 or this Franchise Agreement shall prohibit the City from regulating rates for Cable Service, installation, disconnection, and equipment rental to the full extent permitted by and consistent with State and Federal Law.

B. Franchisee further agrees that it shall not increase rates or charges for Basic Cable service, installation, disconnection, or equipment rental without such notice as required by applicable laws and regulations.

C. Franchisee shall at all times comply with the provisions of Section 15-20 of the Ordinance with respect to nondiscriminatory rates.

D. Franchisee shall not engage in predatory policy or any other anti-competitive business practice prohibited by applicable law.

Section 33. Enforcement Remedies.

A. **Liquidated Damages.** Because the City may suffer damages from any violation by Franchisee of this Agreement or of Ordinance 90-00, which damages may be difficult to quantify, the City and Franchisee agree that liquidated damages shall be paid to the City by Franchisee for violations of this Agreement or the Ordinance in accordance with applicable provisions of Ordinance 90-00.

B. **Revocation or Termination of Franchise.** Franchisee's Franchise is subject to revocation pursuant to Section 15-25 of Ordinance 90-00 for any of the reasons set forth therein. In the event the City exercises its right to revoke the Franchise, the procedures set forth in Section 15-25 of Ordinance 90-00 shall apply.

Section 34. Area-wide Interconnection.

A. For purposes of carriage of governmental and educational programming, the City may request Franchisee to interconnect with any or all other franchised Cable Systems located within the City or serving Subscribers within the City, provided that interconnection is technically feasible and Franchisee and the other operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between Franchisee and such other operator that is reasonable in light of the relative benefits and burdens, including consideration of support provided for educational and governmental access purposes. Interconnection of Systems shall permit transmission and reception of program material, and may be done by direct cable connection, microwave link, satellite, or other appropriate method.

B. Upon receiving the request of the City to interconnect with Cable Systems, Franchisee shall, where it does not own or is not under common control or ownership with the affected System or Systems, immediately initiate good faith negotiations with the operators of the other affected System or Systems in order that costs for construction and operation of the interconnection link may be shared equitably among the Systems. Franchisee shall report to the City the results of such negotiation no later than sixty (60) days after the City's request. Where Franchisee owns or is under common ownership or control with the affected System, Franchisee shall report to the City on the timing, method and cost of interconnection within thirty (30) days of the City's request.

C. The Franchisee may be granted reasonable extensions of time to interconnect. The City may rescind its request to interconnect upon petition by the Franchisee to the City, if the City finds that (1) the Franchisee has negotiated in good faith and has failed to obtain an approval from the System or Systems of the proposed interconnection; or (2) the cost of the interconnection would be unreasonably high.

Section 35. Written Notice of Acceptance. No later than ten (10) days prior to the scheduled date of the Council ordinance approving the grant of this Franchise, Franchisee shall provide the City with written acceptance of all the terms and conditions of this Franchise Agreement. Franchisee's failure to comply in full with this Section shall render this Franchise Agreement and the Franchise null and void with no further action by the City, unless the City agrees in writing to extend such period.

Section 36. No Opposition.

A. By execution of this Franchise Agreement, the Franchisee accepts the validity of the terms and conditions of this Franchise Agreement and Ordinance 90-00 in their entirety, and the processes and procedures pursuant to which this Franchise Agreement was entered into and the Franchise was granted.

B. In the event that after the Effective Date of this Franchise Agreement, or Ordinance 90-00, pursuant to which the Franchise is granted, an official act of any court, agency, commission, legislative body, or other authority of competent jurisdiction (1) renders the Ordinance or the Franchise invalid in whole or in part, or (2) requires the Franchisee or the City either to (a) perform any act which is inconsistent with any provision of the Ordinance or this Franchise Agreement, or (b) cease performing any act required by any provision of the Ordinance or this Franchise Agreement, the Franchisee shall promptly notify the City of such fact. Franchisee and the City shall enter into good faith negotiations to amend this Franchise Agreement so as to enable the Franchisee and/or the City to perform the obligations of the Franchise and enable Franchisee to provide services for the benefit of the City and its residents required by the Franchise to the maximum extent consistent with said official act.

C. Nothing herein shall limit the ability of Franchisee to lobby or otherwise exercise its First Amendment right in pursuit of a change in generally applicable federal, state or local law.

Section 37. Execution in Counterpart. This Franchise Agreement may be executed in counterpart.

Agreed to and Accepted by
Franchisee:

FLORIDA CABLEVISION
MANAGEMENT, CORP., D/B/A/
TIME WARNER

By: Nancy L. Sanders
Name: NANCY L. SANDERS
Title: VP Operations

ATTEST:

Marty Roddy
AS TO "FRANCHISEE"

AS TO "FRANCHISEE"

DATE: 10/10/00

SECTION 4. Repeal of Conflicting Ordinance. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 5. Savings. All rates, fees, charges and financial obligations previously accrued pursuant to the ordinances and resolutions repealed by the Cable Television Ordinance or this Ordinance shall continue to be due and owing until paid.

SECTION 6. Severability. If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION 7. Applicable Law. This Ordinance shall be construed in accordance with the law of the State of Florida and is subject to applicable local, state and federal law.

SECTION 8. Effective Date. This Ordinance shall take effect immediately upon passage by the City Council.

ADOPTED AT A REGULAR COUNCIL MEETING THIS 11 DAY OF September, 2000.

Roger G. Butler
ROGER G. BUTLER, MAYOR

ATTESTED TO AND FILED IN MY OFFICE THIS 21 DAY OF September, 2000.

Bonnie J. Mazurkiewicz
BONNIE J. MAZURKIEWICZ
CITY CLERK

APPROVED AS TO FORM:

David La Croix
DAVID LA CROIX
CITY ATTORNEY
ord/cablfran

I HEREBY CERTIFY that I am the duly appointed and qualified Clerk of the City of Cape Coral, Florida, and the keeper of the records and corporate seal of said municipality, and this is a true and correct copy of Ordinance
91-00
Bonnie J. Mazurkiewicz
City Clerk